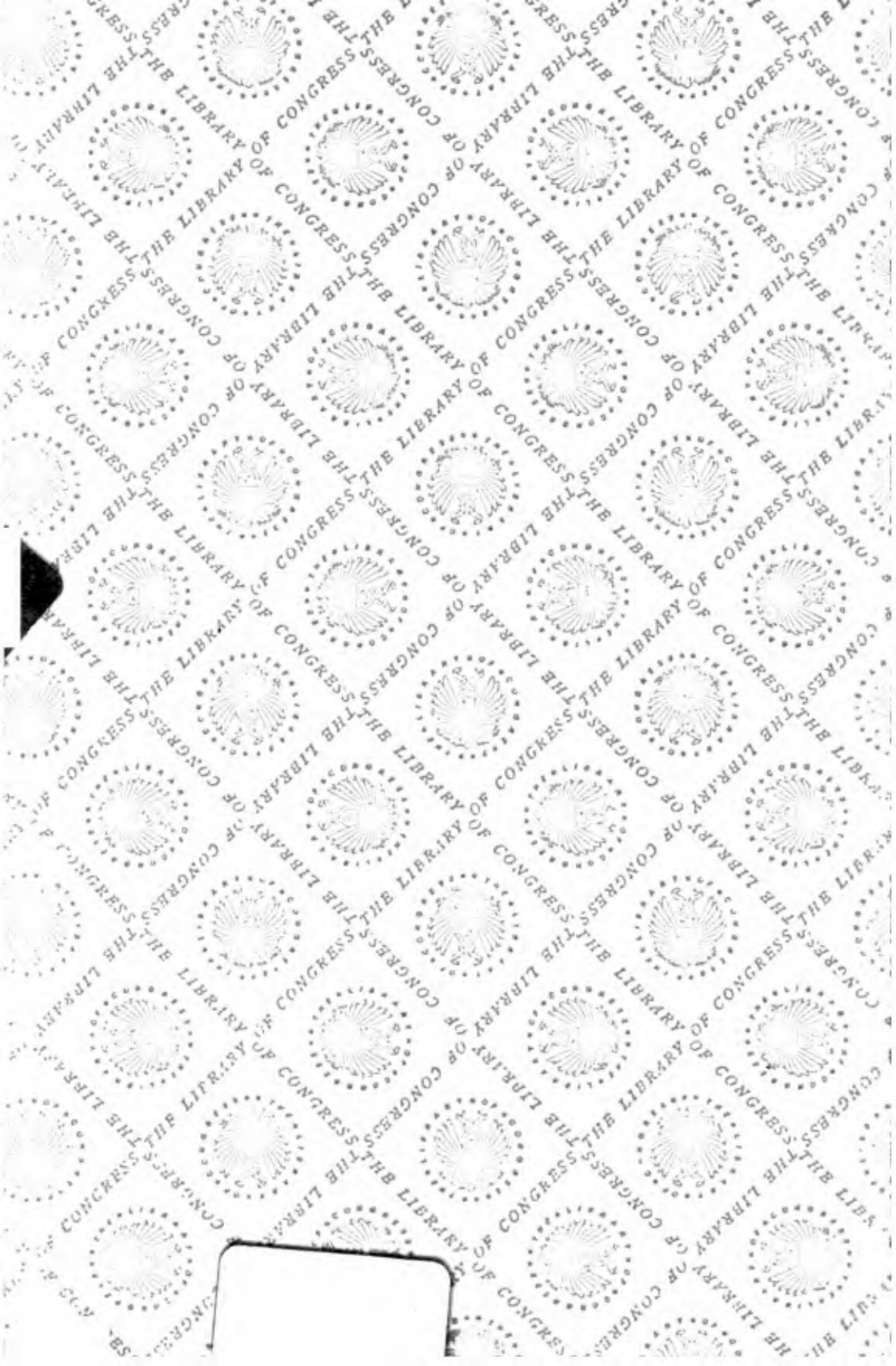
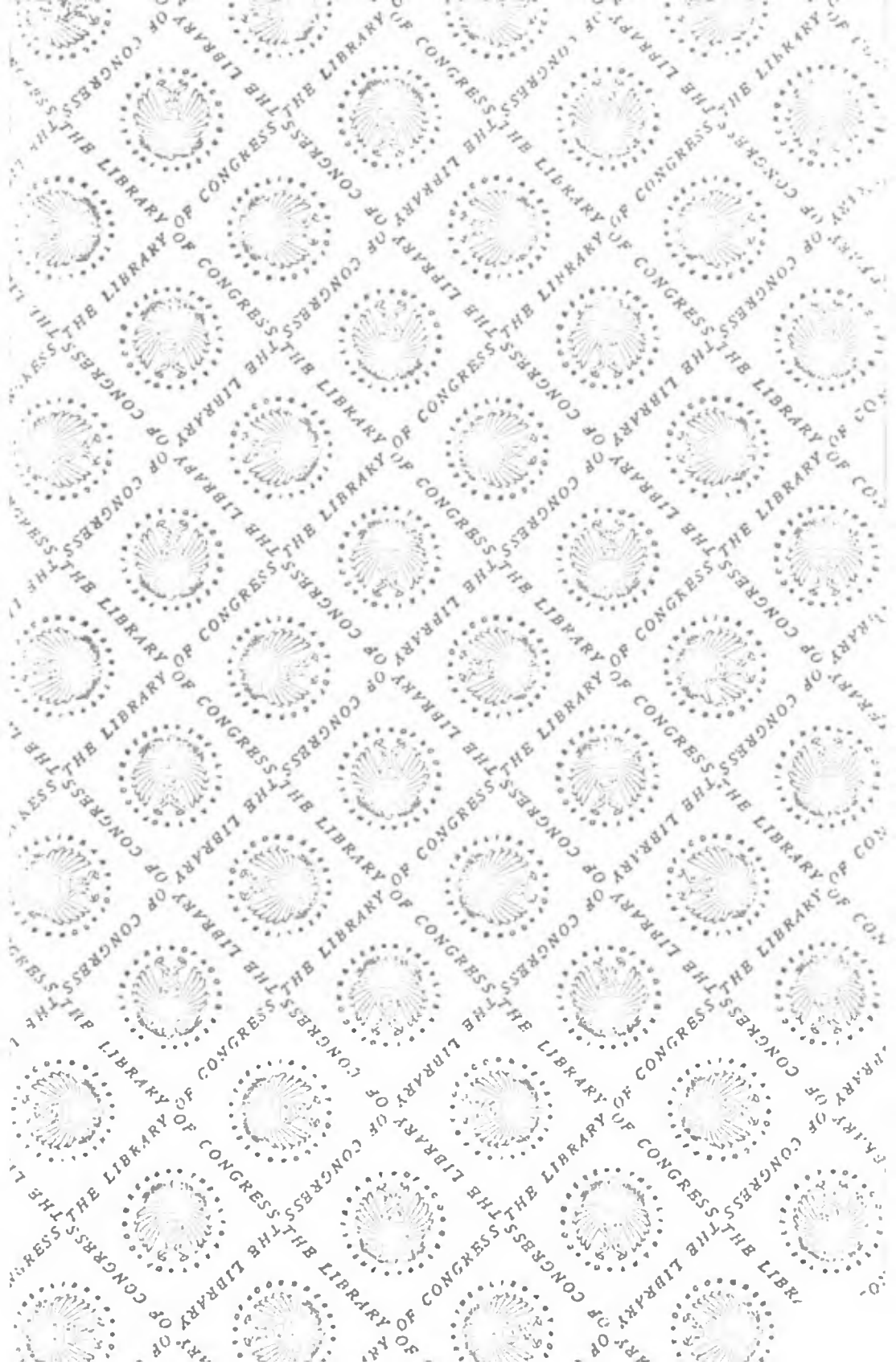


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United States

**PENALTIES FOR CRIMES AGAINST CABINET
OFFICERS, SUPREME COURT JUSTICES,
AND PRESIDENTIAL STAFF MEMBERS**

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMES

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 907

PENALTIES FOR CRIMES AGAINST CABINET OFFICERS, SUPREME COURT
JUSTICES, AND PRESIDENTIAL STAFF MEMBERS

SEPTEMBER 9, 1982

Serial No. 89



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(III)



PENALTIES FOR CRIMES AGAINST CABINET OFFICERS, SUPREME COURT JUSTICES, AND PRESIDENTIAL STAFF MEMBERS

THURSDAY, SEPTEMBER 9, 1982

**U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
*Washington, D.C.***

The Subcommittee met, pursuant to notice, at 9:50 a.m., in room B-352, Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes, Sawyer, Fish, and Kindness.

Also present: Hayden W. Gregory, chief counsel; Virginia Sloan, and Edward O'Connell, assistant counsel; and Deborah K. Owen, associate counsel.

Mr. HUGHES. The Subcommittee on Crime of the House Judiciary Committee will come to order.

This morning we are taking testimony, to be followed by subcommittee markup, on S. 907, a Senate-passed bill. S. 907 would add certain high-level Federal officials to the protections of existing law by providing criminal penalties for killing, kidnaping, attempting to kill or kidnap, and assaulting these high Federal officials.

Section 351 of title 18 of the United States Code currently protects Members of Congress and Members of Congress-elect. S. 907 would amend section 351 to add Cabinet officials and the second-in-command in those departments, the Director and Deputy Director of the CIA, and Supreme Court Justices and nominees to the Court.

Section 1751 of title 18 protects the President and Vice President, the President-elect and Vice President-elect, those in the line of succession to the Presidency, and someone legally acting as the President. S. 907 would amend section 1751 to add senior staff members in the President's and Vice President's office to its coverage.

The reason behind these amendments is obvious. Those who will be added to the protection of Federal law are high-ranking Federal officials often involved in controversial and highly visible activities. Unfortunately, along with their high positions they incur some risk to their personal safety.

Currently, attacks on these officials can generally be prosecuted only by State and local authorities. While the protections of State and local laws may often be adequate, it seems better to avoid the inconsistencies in the scope of the protection and in the punish-

ment meted out to the attackers, by making such attacks Federal crimes to be prosecuted and punished by Federal authorities.

The need for this legislation is especially urgent in light of the tragic attack on President Reagan last year that left his press secretary, James Brady, permanently disabled, and by the very recent attack on Justice Byron White, which fortunately did not cause serious injury to the Justice.

While there may be a few technical questions which we hope to clarify about the way this legislation is drafted, I do not believe that there is any controversy whatsoever about the substance of S. 907. I think we can all agree that it is a necessary piece of legislation, one that should be acted on without undue delay. That is why immediately following this hearing the subcommittee will be holding a markup on the bill. We hope in turn to bring it before the full Judiciary Committee and to the House floor before Congress adjourns in October.

Our first and only witness today is Lowell Jensen, the Assistant Attorney General in charge of the Criminal Division of the U.S. Department of Justice. Before he assumed that position in April of 1981, Mr. Jensen was the district attorney for the city of Oakland, Calif.

I think, Lowell, this is your first time before this particular subcommittee. We are certainly pleased to have you as a witness and extend to you a most cordial welcome. If you will come forward now, we will take your testimony.

We have your written statement, which without objection will be made a part of the record.

Does the gentleman from Michigan have any opening comments?

Mr. SAWYER. No.

Mr. HUGHES. You may proceed in any way you see fit.

TESTIMONY OF D. LOWELL JENSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. JENSEN. Chairman Hughes, I do appreciate the opportunity to be here and I appreciate your welcome. And Congressman Sawyer, it is a pleasure to be here this morning, here before the subcommittee, and also to testify in reference to S. 907.

As you have stated so clearly, I believe that it is a piece of legislation that addresses a serious gap in the present law and it does not create any controversy, and we should address it with the urgency that you suggest in your remarks.

I may say that the legislation was also supported rather vigorously by the recommendations of the Task Force on Violent Crime that the Attorney General reported upon last year. Two recommendations of that Task Force are directly in support of this legislation.

As you stated, the legislation would amend section 351 of title 18 and section 1751 of title 18. And may I make some remarks about the significance of those amendments. These serious crimes against a person are not generally prohibited by Federal law when committed against a Cabinet officer or Presidential staff member, although they would be covered if the crimes happened to occur in the special maritime and territorial jurisdiction of the United

States or, in the case of a kidnaping, if the victim was transported across a State line.

Moreover, while section 1114 of title 18 prohibits the killing of a "judge of the United States," that term is not defined. Although we believe the term is intended to and logically should cover a Supreme Court Justice, it is appropriate to amend section 351 to include a specific reference to that particular subject matter.

Notwithstanding the fact, as you have alluded to, that all States do have laws which prohibit and punish murder, kidnaping and assault, there is clearly a strong Federal interest in being able to bring to bear the resources of the Federal Government when these offenses are directed at the high level officials listed in S. 907. Cabinet members and their immediate deputies and senior White House aides are key members of the executive branch. They directly advise the President and play an important role in the formation of national policy. Members of the Supreme Court sit at the zenith of our legal system and are constantly concerned with issues of national importance.

Of necessity, all these persons deal with controversial issues. They are frequently highly visible and easily recognized by large numbers of persons. Unfortunately, these factors can make them targets of criminal attacks.

It is the significance to the Federal Government of the duties performed by these officials, coupled with their high visibility and vulnerability, that makes it important to assert Federal jurisdiction over violent crimes against them. Leaving the investigation and prosecution of such crimes exclusively to the States with their greatly diverse investigative resources, procedures, and penalties is an inadequate response to what is clearly a Federal problem.

In addition, S. 907 would protect the named officials when they travel abroad, as they often do, and where State laws do not apply. There is, as I understand, a specific reference in the suggested amendment as to extraterritoriality. We may discuss that later if we could.

S. 907 as passed by the Senate reflects a number of features specifically suggested by the Department of Justice in our report on the bill as originally introduced and on a somewhat similar bill, S. 904, and in the Department's testimony on these bills before the Senate Judiciary Subcommittee on Criminal Law on September 22, 1981. Permit me, Mr. Chairman, to list quickly the key provisions of the bill and how they would interrelate with present Federal statutes.

The amendment to 351 of title 18 to make it a Federal crime to kill a Cabinet officer, defined as "a member of the executive branch of the Government who is the head of a department listed in section 101 of title 5," the second ranking official in such Department, the Director or Deputy Director of the CIA, or a Supreme Court Justice or nominee during the pendency of the nomination. This protection of Federal law is presently accorded by section 351 to Members of Congress and Members of Congress-elect. The penalties would be the same as for an attack on a Member or a Member-elect of Congress and would extend to life imprisonment for the murder, kidnaping, attempted murder or kidnaping, or conspiracy to murder or kidnap such a person. The penalty for an as-

sault on such a person would be a fine of not more than \$5,000 or imprisonment for up to 1 year or both, but if personal injury results, the penalty for assault could extend to a \$10,000 fine and imprisonment for up to 10 years, or both.

Subsection 2(a) of the bill amends section 1751 to extend to a limited number of the most senior officials in the Executive Office of the President and in the Office of the Vice President the same kind of protection presently given by that section to the President and Vice President against murder, kidnaping, and attempts or conspiracies to commit these crimes. We have provided this morning a specific list of the positions that are filled and provided it to counsel to the committee.

Mr. HUGHES. Without objection, that will be made a part of the record.

[The material referred to follows:]

ASSISTANTS TO THE PRESIDENT

Counsellor to the President, Edwin Meese, III;
 Chief of Staff and Assistant to the President, James A. Baker, III;
 Deputy Chief of Staff and Assistant to the President, Michael K. Deaver;
 Assistant to the President and Press Secretary, James S. Brady;
 Assistant to the President for National Security Affairs, William P. Clark;
 Assistant to the President and Deputy to the Chief of Staff, Richard G. Darman;
 Assistant to the President for Public Liaison, Elizabeth H. Dole;
 Assistant to the President for Legislative Affairs, Kenneth M. Duberstein;
 Counsel to the President, Fred F. Fielding;
 Assistant to the President for Cabinet Affairs, Craig L. Fuller;
 Assistant to the President for Communications, David R. Gergen;
 Assistant to the President for Policy Development, Edwin L. Harper;
 Assistant to the President and Director of Special Support Services, Edward V. Hickey, Jr.;
 Deputy Counsellor to the President, James E. Jenkins;
 Assistant to the President for Political Affairs, Edward J. Rollins;
 Assistant to the President for Presidential Personnel, Helene A. von Damm;
 Assistant to the President for Intergovernmental Affairs, Richard S. Williamson.

Mr. JENSEN. Thank you.

Neither section 351 nor 1751, either presently or as amended by S. 907, requires proof that the crime was committed while the victim was engaged in the performance of his official duties or on account of such duties. Such an element is likely to be present, but may be difficult to prove in a particular case. The Department of Justice believes that no such official duty nexus should be added for crimes against the very limited number of high-level persons protected by this bill, in view of the strong Federal interest in vindicating the offense irrespective of whether it was committed while or on account of the victim's performance of official duties.

We note that a Federal assertion of jurisdiction is not mandatory under either of these sections and could be declined in favor of State or local prosecution if the facts so warrant.

I would also add that the bill does not impose any additional requirement on the Secret Service or on any other agency to guard or physically protect the persons covered. Thus, no additional expenditure of Federal funds would be involved. Federal funds would only be used, and quite justifiably so, in the unfortunate event of a serious crime against a Cabinet officer, Supreme Court Justice, or White House aide. In such a situation, the FBI would investigate

the events and could call on other Federal and State agencies for assistance.

In conclusion, Mr. Chairman, the Department of Justice is satisfied that the bill, as passed by the Senate, effectively closes an unfortunate loophole in Federal law. We would submit the statement at this point.

[The prepared statement of Mr. Jensen follows:]

PREPARED STATEMENT OF D. LOWELL JENSEN, ASSISTANT ATTORNEY GENERAL,
CRIMINAL DIVISION

Mr. Chairman and members of the Subcommittee. I am pleased to appear before you today to express the strong support of the Department of Justice for S. 907, a bill that would close a serious gap in present law by providing for Federal jurisdiction over murders, kidnappings, and assaults on Cabinet officers, Supreme Court Justices, the highest level of White House Officials such as the Presidential Press Secretary and Counsellor to the President, and the Director of the CIA. The assassination attempt on President Reagan and the wounding of Press Secretary James Brady in March of last year served to highlight the need for this legislation.

Section 351 of Title 18 currently prohibits the killing, assault, or kidnapping of a Member of Congress or Member of Congress-elect. Section 1751 of Title 18 prohibits such crimes when directed against the President, the President-elect, the Vice President, the Vice President-elect, or any individual acting as President under the Constitution or laws of the United States. Attempts and conspiracies to kill or kidnap these persons are also covered.

But these serious crimes against the person are not generally prohibited by Federal law when committed against a Cabinet officer or Presidential staff member, although they would be covered if the crime happened to occur in the special maritime and territorial jurisdiction of the United States, or, in the case of a kidnapping, if the victim was transported across a State line. Moreover, while section 1114 of Title 18 prohibits the killing of a "judge of the United States," that term is not defined. Compare 28 U.S.C. 451 with Rule 54, F.R. Crim. P. Although we believe the term was intended to and logically should cover a Justice of the Supreme Court, it is appropriate to amend section 351 to include specific reference to Supreme Court Justices so as to clearly provide such coverage on the same basis as a Member of Congress.

Notwithstanding the fact that all States have laws prohibiting and punishing murder, kidnapping, and assault, there is clearly a strong Federal interest in being able to bring to bear the resources of the Federal Government when these offenses are directed at the high level officials listed in S. 907. Cabinet members and their immediate deputies and senior White House aides are key members of the Executive Branch. They directly advise the President and play an important role in the formation of national policy. Members of the Supreme Court sit at the zenith of our legal system and are constantly concerned with issues of national importance. Of necessity, all these persons deal with controversial issues. They are frequently highly visible and easily recognized by large numbers of persons. Unfortunately, these factors can make the targets of criminal attacks.

It is the significance to the Federal Government of the duties performed by these officials, coupled with their high visibility and vulnerability, that make it important to assert Federal jurisdiction over violent crimes against them. Leaving the investigation and prosecution of such crimes exclusively to the States with their greatly diverse investigative resources, procedures, and penalties is an inadequate response to what is clearly a Federal program. In addition, S. 907 would protect the named officials when they travel abroad, as they often do, and where State laws do not apply. See *United States v. Layton*, 509 F. Supp. 212 (N.D. Cal. 1981) (holding that it was reasonable to infer that Congress had intended extraterritorial application of 18 U.S.C. 351).

S. 907 as passed by the Senate reflects a number of features specifically suggested by the Department of Justice in our report on the bill as originally introduced and on a somewhat similar bill S. 904, and in the Department's testimony on these bills before the Senate Judiciary Subcommittee on Criminal Law on September 22, 1981. Permit me, Mr. Chairman, to list quickly the key provisions of the bill and how they would interrelate with present Federal statutes.

Section one amends section 351(a) of title 18 of the United States Code to make it a Federal crime to kill a Cabinet officer, defined as "a member of the Executive Branch of the Government who is the head of a department listed in section 101 of

title 5", the second ranking official in each such department, the Director or Deputy Director of the CIA, or a Supreme Court Justice or nominee during the pendency of the nomination. This protection of Federal law is presently accorded by section 351 to Members of Congress and Members of Congress-elect. The penalties would be the same as for an attack on a Member or Member-elect of Congress and would extend to life imprisonment for the murder, kidnaping, attempted murder or kidnaping, or conspiracy to murder or kidnap such a person.¹ The penalty for an assault on such a person would be a fine of not more than \$5,000 or imprisonment for up to one year or both, but if personal injury results the penalty for assault could extend to a \$10,000 fine and imprisonment for up to ten years, or both.

Subsection 2(a) of the bill amends section 1751 of title 18 to extend to a limited number of the most senior officials in the Executive Office of the President and the Office of the Vice President the same kind of protection presently given by that section to the President and Vice President against murder, kidnaping and attempts or conspiracies to commit these crimes. For any of these offenses the penalty could extend to life imprisonment. The officials so protected are persons employed in the Executive Office of the President or in the Office of the Vice President authorized to receive pay at the rate which applies for positions at level II of the Executive Schedule. The President is authorized to appoint 25 such persons and the Vice President five, in accordance with 3 U.S.C. 105 and 106.

Subsection 2(b) amends section 1751(e) to cover assaults on these top level Presidential and Vice Presidential aides and to set the penalty for assaults on these persons. The penalty for assault on the President, President-elect, Vice President, Vice President-elect or person next in line to the Presidency if there is no Vice President will continue to be up to ten years' imprisonment and a \$10,000 fine. However, the penalty for assaulting one of the Presidential or Vice Presidential aides added to section 1751(a) by this bill would only extend to ten years' imprisonment and a \$10,000 fine if personal injury results. In other cases, the maximum penalty for an assault on one of the covered Presidential or Vice Presidential aides would be a \$5,000 fine and imprisonment for one year. This makes the penalty for assault on a Presidential aide consistent with that for an assault on a Cabinet officer or Supreme Court Justice under section 351.

It should be noted that neither section 351 nor section 1751, either presently or as amended by S. 907, requires proof that the crime was committed while the victim was engaged in the performance of his official duties or on account of such duties. Such an element is likely to be present but may be difficult to prove in a particular case. The Department of Justice believes that no such official duty nexus should be added for crimes against the very limited number of high level persons protected by this bill in view of the strong federal interest in vindicating the offense irrespective of whether it was committed while, or on account of, the victim's performance of official duties. We note that federal assertion of jurisdiction is not mandatory under either of these sections and could be declined in favor of State or local prosecution if the facts should so warrant.

I would also add that the bill does not impose any additional requirement on the Secret Service or any other agency to guard or physically protect the persons covered. Thus, no additional expenditure of federal funds would be involved. Federal funds would only be used, and quite justifiably so, in the unfortunate event of a serious crime against a Cabinet officer, Supreme Court Justice, or White House aide. In such a situation the FBI would investigate the offense and could call on other Federal and State agencies for assistance.

In conclusion, Mr. Chairman, the Department of Justice is satisfied that the bill as passed by the Senate effectively closes an unfortunate loophole in Federal law. We do not recommend any amendments at this point and urge its prompt consideration by the Subcommittee.

Mr. HUGHES. Thank you very much, Lowell. I just have three brief questions.

First, I understand you testified before the Senate on S. 907. While neither section 351 nor 1751 says so explicitly, they both have extraterritorial reach. I am sure you are aware of the fact that in the case of Congressman Leo Ryan, and his murder in Guyana the jurisdiction of the court was challenged. And while the

¹ 18 U.S.C. 351 and 1751 (discussed hereafter). Both carry a statutory death penalty which is presently constitutionally unenforceable.

court found jurisdiction, my question is, Would it be preferable that it be made explicit in this legislation that we do intend extra-territorial reach?

Mr. JENSEN. I think that is preferable drafting. I agree with the chairman, and I would agree that an amendment which so stated would be an acceptable amendment so far as we are concerned. We would support that.

Mr. HUGHES. Do you think that the question of whether a defendant needs to have knowledge of the victim's status at the time of the offense is adequately resolved by the language of the current statutes?

Mr. JENSEN. The language of the proposed statute does not specifically address that in an adequate sense. I suppose present case law does not require a state of mind that is knowledgeable that the person assaulted, attacked, or murdered is in fact a person who is covered by the statute.

We would agree that a specific statement to that effect would be better drafting, again, and that it would be supported. The only caveat I might add to that is that case law with reference to that kind of an element in Federal offenses that do not require scienter, is also present in other kinds of statutes. We would suggest that if it were stated explicitly in the statute, that there be some kind of statement accompanying the bill that makes it clear that we are not intending to affect other legislation.

So I think it is a good idea to specifically state this, but I think it is also a good idea that there be language accompanying the bill which makes it clear that the specific drafting in this bill does not affect other elements of other crimes.

Mr. HUGHES. I think that is a very valid point.

Finally, in the legislation we do not encompass nominees to the position of Cabinet Secretary and CIA Director. In your judgment, should we make any distinction between nominees to the Supreme Court and nominees to Cabinet positions and the CIA Directorship?

Mr. JENSEN. Our suggestion in terms of the inclusion of Supreme Court Justices in 351 would I think carry with it that necessary implication, and we would support a statement that a nominee to a cabinet position should be treated the same as other nominees.

Mr. HUGHES. Thank you.

The gentleman from Michigan?

Mr. SAWYER. I have some misgiving about decreasing the penalty for assault if the victim has a slightly less important job. I understand that there may be some argument in favor of it, but it seems to me an assault is an assault. If we are going to make it a Federal crime, it should not be a lesser crime just because the victim's job is not quite as good.

Mr. JENSEN. Well, I think this addresses itself to the whole hierarchy of punishments. I do not disagree with your assessment that the fact that you do not accomplish your assault necessarily changes your liability. However, that seems to be the whole structure of hierarchical punishments in all assaults.

In a sense, the system does have a result-oriented kind of hierarchy of punishment. So we are simply stating it. But this addresses itself to your definition as to what are the appropriate punishments. We think that whatever definitions of a punishment that

are sufficient to address the severity of the crimes ought to be stated. But the way this is drafted is simply to track the kinds of hierarchical punishments that exist in the whole criminal justice system.

Mr. SAWYER. Sections 1111 and 1112, that provide for the punishment in case of a killing, provide for life imprisonment. Apparently, this would be subject to parole. We have—we have never had the death penalty in Michigan. But, consequently, we have enacted a somewhat tougher penalty for first degree murder, namely mandatory life without eligibility for parole. As a result we do not have anything like the Manson parole controversy in Michigan. Recognizing that whatever your feeling may be on the death penalty, there is enough inherent opposition to it and enough uncertainty about its application as evidenced by the crowded death rows around the country, there ought to be some consideration on crimes of this severity of providing for life without eligibility for parole.

Mr. JENSEN. Well, I may say that the punishment, whether or not there is death penalty for these specific offenses, is not a question of the way the statutes are drafted. It is a question of whether or not there is a constitutional procedure in Federal law. And we have previously supported, the Department has supported and I have testified in favor of, a bill which would create a procedure which would allow death penalty in these cases under the specific circumstances that might be outlined in the present statute.

So we have supported and would support a procedural mechanism that would constitutionally implement a death penalty in these cases where it is appropriate, where it fits within a statute. It does not really address the idea of life without the possibility of parole. That really gets into the subject matter of a change of the sentence structure in Federal law.

I think that it is a matter that is of concern. It was a part of the concern with reference to the Criminal Code that did not move. But we would be interested in looking at it from a total perspective, rather than from this particular bill. But I think your comments are appropriate.

Mr. SAWYER. Thank you.

I yield back.

Mr. HUGHES. The gentleman from New York.

Mr. FISH. No questions. Thank you.

Mr. HUGHES. The gentleman from Ohio, Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman. No questions.

Mr. HUGHES. Thank you very much, Lowell. We appreciate your testimony. You have been most helpful.

Before the Subcommittee adjourns this particular hearing and we move into markup, I would like to just introduce, if I might, Lt. John Divel from Ocean City of the Ocean City Police Department, and his son Jack Divel. They have four members of their family who are in law enforcement. He happens to come from my hometown. And John King, also a member of the Ocean City Police Department.

Mr. KINDNESS. What State is that?

Mr. HUGHES. That is the great State of New Jersey, the Garden State, I might say. They are from the beautiful part of the Garden

State, southern New Jersey, which just voted 2 years ago to secede from the rest of the State.

Mr. SAWYER. That sounds like a good move.

Mr. HUGHES. We are delighted to have them with us.

With that, the subcommittee stands adjourned and we will resume our markup when we come back from the vote. The subcommittee is adjourned.

[Whereupon, at 10:05 a.m., the subcommittee was adjourned, to reconvene upon the call of the Chair.]

ADDITIONAL MATERIAL

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., September 9, 1982.

HON. WILLIAM J. HUGHES,
Chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter presents the views of the Central Intelligence Agency on S. 907, which will provide federal criminal penalties for violent attacks on Cabinet officers, Supreme Court Justices, and Presidential staff members. The legislation has passed the Senate and is currently pending before your Subcommittee. The Central Intelligence Agency strongly supports enactment of this legislation, which will, among other things, make assault, kidnaping, or murder of the Director or Deputy Director of Central Intelligence federal criminal offenses.

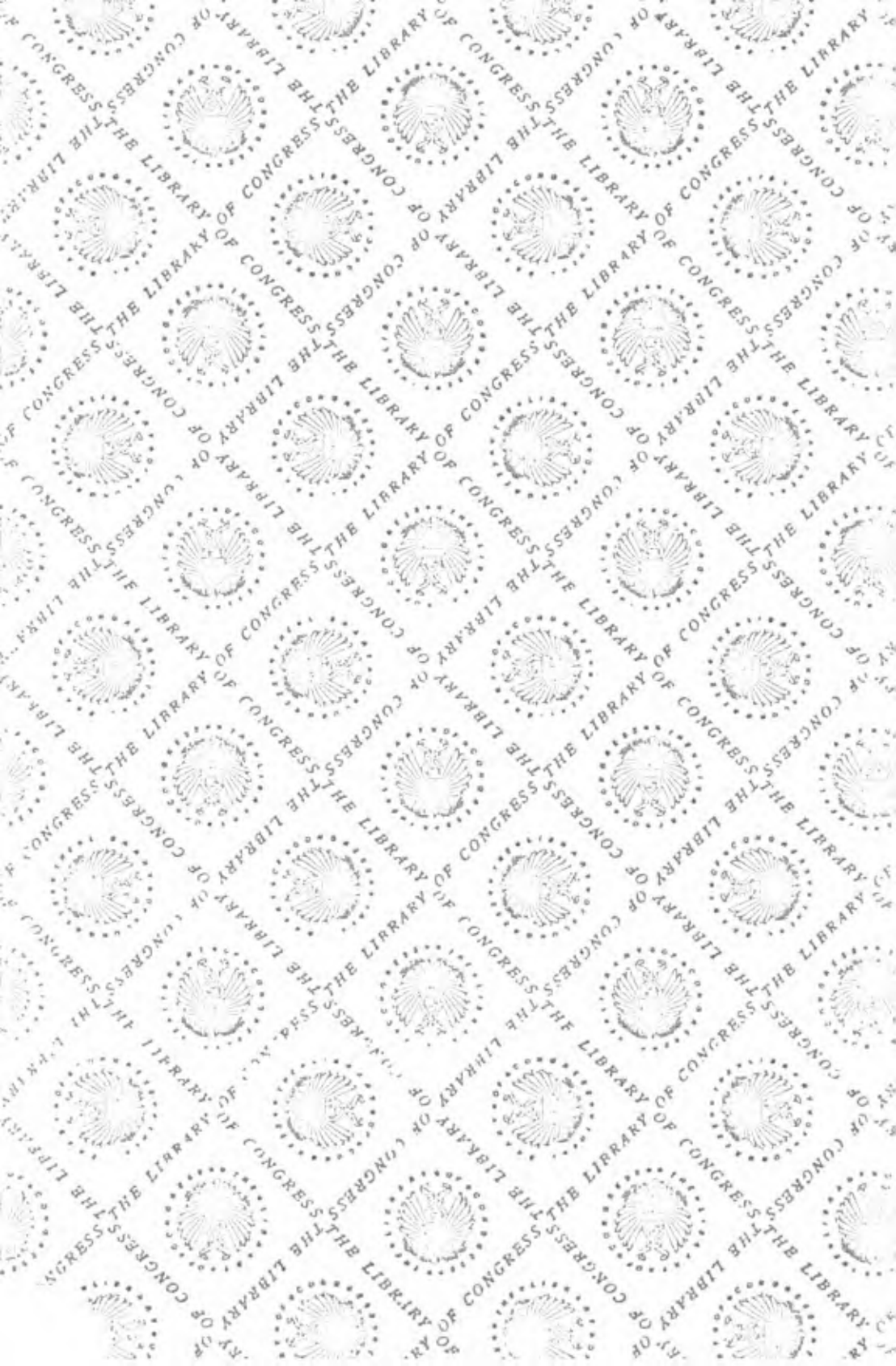
Because of his unique role as a member of the President's Cabinet, as head of the United States Intelligence Community, and as head of the Central Intelligence Agency, the Director of Central Intelligence is often the subject of threats of violence. During the past five years threats of violence aimed at the Director have occurred at an average rate of once per month. Similar, though less frequent, threats have been made with respect to the Deputy Director of Central Intelligence.

Under current law, despite the compelling federal interest in assuring the physical safety of the Director and Deputy Director of Central Intelligence, violent attacks against them violate only the laws of the several states and their subdivisions, and local law enforcement authorities may lack the resources and expertise necessary to detect and prevent, or to investigate and prosecute, such acts of violence, particularly when the conduct has international implications. The legislation pending before your Subcommittee corrects this situation by including the Director and Deputy Director of Central Intelligence among the officials which S. 907 seeks to protect.

We appreciate very much the opportunity to present our views on this important legislation. The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

STANLEY SPORKIN.





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